IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.7362 of 1999

Between:

V.V. Brahmananda Reddy, S/o V. Laxmi Reddy
R/o 8-96/A, New Dilsukhnagar Hyderabad-500060.

..... PETITIONER

AND

1 Andhra Pradesh State Cooperative Marketing

Federation Limited, Hyderabad
Rep. by its Managing Director,

7th Floor, Parishram Bhavan, Basheerbagh
Hyderabad - 500 004.

2 The Government of Andhra Pradesh, Rep. by its Secretary,
Labour Department, Secretariat Buildings,
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order direction or writ particularly one in the nature of Writ of Mandamus (1) declaring that the payment of Gratuity (Amended) Act 1998 is applicable to the petitioner herein; (2) declaring the proceedings No.Ef/182/97 dated 18-2-1999 of the respondent herein as illegal, arbitrary and contrary to the Payment of Gratuity Act and consequently direct the respondents to pay the difference of Gratuity in accordance with the Payment of Gratuity Act as amended by Act No.11/1998 together with costs and interest and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. G.VIDYASAGAR

Counsel for the Respondent No.1: Mr. VILAS V.AFZULPURKAR

Counsel for the Respondent No.2: G.P. for Labour

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring that the Payment of Gratuity (Amendment) Act 1998 is applicable to the petitioner and also the Proceedings No.Ef/182/97, dated 18-2-1999 of the 1st respondent as arbitrary and illegal and consequently to direct the respondents to pay the difference of gratuity in accordance with the provisions of Payment of Gratuity Act as amended by Act No.11 of 1998 to him.

The only question that falls for consideration in this Writ Petition is whether the petitioner is entitled for the gratuity as per the Payment of Gratuity (Amendment) Act,1998 or not ?

The petitioner after attaining the age of superannuation retired from service on 31-12-1997. On his retirement, while paying the retiral benefits, the law as applicable as to the payment of gratuity as on that day was not applied and the petitioner was paid the gratuity as per the old Act i.e. Rs.1,00,000/- only. Under the Amendment Act (No.11 of 1998), the words 'one lakh' were substituted as 'three lakh and fifty thousand' with effect from 24-9-1997. The case of the petitioner is that since he retired from service on 31-12-1997, the Amendment Act is applicable to him and he is entitled for gratuity of Rs.3.50 lakhs.

Learned counsel for the respondent No.1 contended that as per the service regulations of the respondent-Markfed, they are bound to follow the A.P. Payment of

Gratuity Rules and the 1st respondent adopted the provisions of the said Amendment Act as per the resolution passed by the Board of Directors of the Markfed on 28-12-2002 with effect from 4-6-2002 as per the advise of the Government and in tune with G.O.Ms.No.157, Finance and Planning (FW.Pen.I) Department, dated 16-9-1999.

It is not the case of the respondents that they are supposed to pay the gratuity as is applicable to the Government employees. Once this is so, adopting the provisions of the Amendment Act with effect from 4-6-2002 does not arise. The employees of the 1st respondent-Markfed are governed by the provisions of the Payment of Gratuity Act and the Rules made thereunder by the State Government. But, that itself does not mean that they can adopt the provisions of the Amendment Act from a date which is convenient to them. In fact, a similar question arose for consideration of this Court in Writ Petition No.30307 of 1997 and by Judgment dated 6-3-1998, it was held as under:

> "There is no controversy between the parties that some of the members of the petitioner Trade Union were retired with effect from 31-10-1997 under the voluntary retirement scheme. There is also no controversy between the parties that the members of the petitioner Trade Union are entitled to gratuity under the Act. Earlier to the issuance of the Ordinance, the ceiling fixed under sub-Section (3) of Section 4 of the Act was Rs.1 lakh and by virtue of the Ordinance, that ceiling was enhanced to Rs.2.50 lakh. This Ordinance was published in the Gazette of India on 24-9-1997 and consequently, the Ordinance came into force with effect from that date. After the Ordinance came into force, some of the members of the petitioner were retired under the aforementioned voluntary retirement scheme with effect from 31-10-1997. The facts stated supra make it very clear that the members of the petitioner Trade Union are entitled to the gratuity in terms of the Ordinance.
>
> When this is the position, quite strangely, in the counter-affidavit filed by the respondent, it is stated that the Board of Directors of the respondent-Corporation resolved to apply the provisions of the Ordinance with the effective date to be announced by the Government of Andhra Pradesh. The stand taken by the Board of Directors of the respondent-Corporation apparently reflect ignorance on their part and the Government of Andhra Pradesh has nothing to play in this regard. Once the Ordinance came into force with effect from 24-9-1997, a liability is passed on to the respondent-Corporation to pay gratuity Interlocutory terms of the Ordinance. A case is made out for interference."

In view of the above, the contention of the 1st respondent that the petitioner is not entitled for the gratuity as per the Amendment Act and he is entitled only as per the Resolution passed by the Board of Directors of Markfed cannot be

countenanced. In the circumstances, this Court is of the opinion that the petitioner is entitled for payment of gratuity in accordance with the provisions of the Payment of Gratuity (Amendment) Act,1998.

In the result, the Writ Petition is allowed and the respondents are directed to calculate and pay the gratuity to the petitioner as per Section 4(3) of the Payment of Gratuity (Amendment) Act,1998, within a period of two months from the date of receipt of a copy of this order. It is needless to mention that the petitioner is also entitled for interest at the rate of 6% per annum on the gratuity amount to which the petitioner is entitled to from the date it became payable till the date of payment as per Section 7(3-A) of the Payment of Gratuity Act and in view of the ratio laid down by the Apex Court in **H. GANGA HANUME GOUDA v. KARNATAKA AGRO INDUSTRIES LIMTIED** {2003(4) SCC 40}. No order as to costs.

13-7-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Wednesday, Thirteenth day of July Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Managing Director,

Andhra Pradesh State Cooperative Marketing

Federation Limited, Hyderabad

7th Floor, Parishram Bhavan, Basheerbagh
Hyderabad - 500 004.

2 The Secretary, Government of Andhra Pradesh,
Labour Department, Secretariat Buildings,
Hyderabad.

3 2 CCs to Govt.Pleader for Labour, High Court Buildings, Hyderabad (OUT).

4 CD copies.